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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-14300-alg

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In the Matter of:

HMX ACQUISITION CORP., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 29, 2012

10:10 AM

B E F O R E:

HON. ALLAN L. GROPPER

U.S. BANKRUPTCY JUDGE

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Final Hearing RE: Motion by Debtors authorizing to maintain
prepetition insurance policies; enter into new insurance
policies; and maintain prepetition premium financing
agreements.

Final Hearing RE: Motion by Debtors authorizing to pay
prepetition taxes and regulatory fees; and directing financial
institutions to honor and process checks related to prepetition
taxes and regulatory fees.

Final Hearing RE: Motion by Debtors authorizing maintenance of
existing bank accounts, continued use of existing business
forms, continued use of existing cash management system and for
related relief.

Final Hearing RE: Motion by Debtors authorizing to maintain
and administer customer programs and honor related prepetition
obligations to customers.

Motion by Debtors establishing procedures for the assertion,
resolution, allowance and satisfaction of unpaid claims
asserted.

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Motion by Debtors authorizing the retention and compensation of
certain professionals utilized in the ordinary course of
business.

Final Hearing RE: Motion by Debtors directing to pay certain
accrued prepetition wages.

Motion by Debtors establishing procedures for interim
compensation and reimbursement of expenses for professionals.

Motion by Debtors authorizing employment of CDG Group, LLC as
financial advisor for the debtors nunc pro tunc.

Motion by Debtors for authority to employ and retain Epiq
Bankruptcy Solutions, LLC as administrative agent nunc pro
tunc.

Final Hearing RE: Motion by Debtors to pay prepetition claims
of shippers, warehousers, processors and lien claimants and
certain customs duties and similar incidental prepetition
import expenses; and authorizing, but not directing, all
financial institutions to honor all related payment requests.

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Motion by Debtors authorizing rejection of certain unexpired
leases of nonresidential real property.

Status Conference RE: Motion by Debtors authorizing the
Debtors' entry into the stalking-horse purchase agreement,
authorizing and approving the bidding procedures and break-up
fee.

Motion by Debtors authorizing employment of William Blair &
Company, LLC as investment banker for the Debtors nunc pro
tunc.

Motion authorizing employment of Proskauer Rose, LLP as counsel
for the Debtors nunc pro tunc.

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1 P R O C E E D I N G S

2 THE COURT: We're now going to take HMX Acquisition
3 Corp. Do we have parties in HMX on the phone today:

4 OPERATOR: Yes, Your Honor.

5 THE COURT: We do. All right. Then I'll keep the
6 phone line open.

7 May I have appearances in HMX, please?

8 MR. KUGLER: Good morning, Your Honor. Robert Kugler
9 on behalf of the unsecured creditors' committee.

10 MR. KHODOROVSKY: Nazar Khodorovsky for the U.S.
11 Trustee.

12 MR. KEENAN: Paul Keenan on behalf of Salus Capital.

13 MS. LAUKITIS: Lisa Laukitis from Jones Day, on behalf
14 of the Carlyle Group and Bluestar Alliance.

15 MR. CHESLEY: Richard Chesley, DLA Piper, on behalf of
16 ABG HMX, the stalking-horse bidder.

17 MR. GELBER: Lawrence Gelber of Schulte, Roth & Zabel,
18 on behalf of the Amalgamated Health Fund.

19 MR. KENNEDY: Thomas Kennedy, Your Honor, of Kennedy,
20 Jennik & Murray, on behalf of Workers United.

21 MR. THOMAS: Good morning, Your Honor. Mark Thomas of
22 Proskauer, on behalf of the debtors and debtors-in-possession,
23 with my colleagues Mr. Peter Young and Mr. Jared Zajac.

24 THE COURT: Does anyone else wish to appear?

25 MR. HALPERIN: Good morning, Your Honor. Alan

1 Halperin, Halperin Battaglia Raicht, on behalf of Douglas
2 Williams.

3 THE COURT: Anyone on the telephone wish to note an
4 appearance for the record?

5 All right. Counsel, please proceed.

6 MR. THOMAS: Thank you, Your Honor. Mark Thomas, on
7 behalf of the debtors. Your Honor, I'm pleased to report that
8 all matters that are on the agenda have been resolved, and all
9 objections filed by the committee have been resolved. And we
10 will go through the agenda, which was docket number 181.

11 And we have not been able to file in advance of the
12 hearing the resolved orders, but we will be able to file them
13 after the hearing. We had meetings over the last day with the
14 committee, with the stalking-horse bidder, with the DIP lender,
15 and have a consensual resolution of everything on today's call.

16 THE COURT: Well, I'm delighted that the matters
17 appear to consensual. I'll hear from anyone, obviously, who
18 wishes to be heard. I will, for the record, and without in any
19 way attempting to rain on your parade or the committee's
20 parade, suggest that in the future, perhaps some of the issues
21 that the committee raised vis-a-vis the orders, could be raised
22 by an informal meeting between the parties, and a few trees
23 could be saved. And more important, frankly, a few dollars,
24 perhaps could be saved.

25 And -- but I'm glad that there is a resolution. I'm

1 not surprised, due to the professionalism of the parties
2 involved and the parties' recognition that we are dealing with
3 a debtor in Chapter 11. Please go ahead. Where shall we
4 start?

5 MR. THOMAS: Thank you, Your Honor. I believe the
6 first matter we should start with is the status conference.
7 And the status conference was set originally on November 7th,
8 as part of the order approving bid procedures, which was docket
9 number 104. Your Honor, that followed a telephonic hearing
10 that we had in the wake of the hurricane, and the committee had
11 not yet been appointed. So there was a status conference set
12 with the anticipation and hope that the bidding procedures
13 order would be final, but for any objections of a statutory
14 committee.

15 We were back before Your Honor thereafter. The
16 committee had just been formed. They filed objections to the
17 bidding procedures order, which was docket number 104. We were
18 able to resolve certain of those objections. And that resulted
19 in docket number 169, which was a revised bid procedures order
20 which was entered by Your Honor on November 21st.

21 There were four reserved objections that were set over
22 for further status today. And, Your Honor, each and every one
23 of those objections has been resolved, and we will be
24 tendering, after court, an order. I can walk you through a
25 blackline, if you wish.

1 THE COURT: I think that would be useful, so that
2 everyone here has an opportunity to hear what the resolutions
3 are. Why don't we start with the four open issues relating to
4 the sale order. I think that's the most important order or
5 matter that's not been closed.

6 MR. THOMAS: Certainly, Your Honor. And what I'll do
7 is I'll just highlight those four issues before I actually
8 tender the blackline to Your Honor.

9 The four principal issues that were reserved were the
10 committee's objection number 1, to the timing of the sale
11 process.

12 THE COURT: No, I remember. I -- okay, number 2?

13 MR. THOMAS: Number 2 was the amount of the break-up
14 fee that the stalking-horse purchaser would obtain in certain
15 situations.

16 THE COURT: Number 3?

17 MR. THOMAS: Number 3 was the timing for the potential
18 financing to be provided by the licensing new -- I'm sorry --
19 the licensee, which is the new OpCo, which may be created by
20 the CEO of the company, Mr. Douglas Williams.

21 THE COURT: And 4?

22 MR. THOMAS: Number 4 was clarification regarding
23 what's known as the Salus claim discount. And that is a letter
24 agreement between the pre-petition and DIP lender, Salus, and
25 the debtors-in-possession, which was filed as docket number

1 114. And the committee wanted clarification on how that would
2 impact or work in the auction and bidding procedures.

3 THE COURT: Okay. All right. And the resolution?

4 MR. THOMAS: Your Honor, the resolution is: with
5 respect to the sale dates and process, the parties have agreed
6 to basically push back everything by one week. And when we
7 initially filed these cases, Your Honor, we were actually
8 seeking a much rapider process, but events intervened.

9 On November 7th, docket number 104 provided for a bid
10 deadline of December 6th, an auction of December 10, and a sale
11 hearing on December 13th. And the parties have now agreed that
12 the bid deadline will be December 12th -- that's not a seven-
13 day extension, it's a six-day extension. I can explain why.
14 The auction --

15 THE COURT: I don't think you need to.

16 MR. THOMAS: Thank you. The auction --

17 THE COURT: So bids 12/13?

18 MR. THOMAS: Bids 12/12.

19 THE COURT: 12/12. All right.

20 MR. THOMAS: Auction 12/17. And, Your Honor, we had
21 contacted your chambers to see your potential availability for
22 a sale hearing the week of the 17th. We had requested two
23 days, in the event that perhaps the auction drags on and takes
24 longer than a day, and we'd have to go to the second day, or in
25 the event that the sale hearing continued.

1 We were told by chambers that subject to today --
2 hearing us today, that you might be available on the 19th at
3 2:30. And then a continue date, if needed, of the 20th. And I
4 believe that was at 10 a.m.

5 THE COURT: All right. Let's -- I'll check those
6 numbers. I'll give them to you, unless somebody else has
7 already got the time, and it appears inevitable that that time
8 will be taken up. All right.

9 And the committee is on board. Does anyone wish to be
10 heard about these dates? I assume your investment bankers
11 believe that the universe of interested bidders will be able to
12 get notice of these extended dates and will be able to conform
13 their actions accordingly?

14 MR. THOMAS: Your Honor, the debtors' investment
15 banker believes so. And we have been working diligently and
16 cooperatively with the committee's proposed financial advisor
17 and proposed counsel since they were appointed over a week ago,
18 to provide them information on a daily basis, whether by
19 telephone or in-person meetings. So we're doing our best to
20 keep them in the loop and completely up to speed.

21 THE COURT: Does anyone wish to be heard with regard
22 to the dates?

23 All right, issue number 2: the break-up fee?

24 MR. THOMAS: Your Honor, on the break-up fee, the
25 committee had no objection to the approved break-up fee, in the

1 event that there is what we call the option A bid. The option
2 A bid is the going concern bid, which has two major
3 contingencies. One is that a license agreement be reached, and
4 the other is that financing be obtained. They did have an
5 objection that the break-up fee should not apply if there was
6 as B bid, which is sort of the liquidation bid, if the two
7 contingencies are not met.

8 After negotiations with the stalking-horse purchaser,
9 the committee and the stalking-horse purchaser agreed that if
10 there is a B bid that's the winning bid, and the stalking-horse
11 purchaser obtains a break-up fee, that break-up fee would be
12 2.1 million dollars, which is a slight reduction of the going-
13 concern breakup fee.

14 THE COURT: And what percentage of that?

15 MR. THOMAS: It will be less than three percent of the
16 floor of the stalking-horse liquidation bid.

17 THE COURT: All right. Does anyone wish to be heard
18 about this resolution?

19 All right, the date for the financing of the -- I
20 gather of what we call the licensing agreement.

21 MR. THOMAS: Yes, Your Honor. The purchase agreement
22 with the stalking horse bidder provides that that financing
23 must be provided three business days in advance of the auction.
24 The committee had initially, in their objection, thought that
25 that financing should be completed fourteen business days in

1 advance of the auction, which would be --

2 THE COURT: Wednesday.

3 MR. THOMAS: -- yes, it would have been in the past.

4 And what happened is, the committee and its professionals and
5 its financial advisors spent time meeting with the DIP lender,
6 which is the proposed exit finance facility -- Salus is
7 proposing a term sheet to provide potential exit financing to
8 the licensee operating company -- and they met with Mr.
9 Williams. And I believe, based on those meetings and
10 discussions, they've agreed to, in effect, withdraw that
11 objection; that there's no reason, really, to disqualify a
12 potential bid so far in advance of a bid deadline.

13 Our bid deadline is the 12th. And that's normally
14 when we would vet and qualify the financial wherewithal of a
15 potential bidder to determine whether or not they are qualified
16 bidders.

17 THE COURT: And so that would also be the deadline for
18 financing relating to the possible -- possibility of an A
19 transaction?

20 MR. THOMAS: Yes. Because that is three business days
21 in advance of the auction.

22 THE COURT: So if someone other than the -- I see. So
23 parties will have between the 12th and the 17th to try to
24 adjust their bids to the possibility of an A versus a B
25 transaction.

1 MR. THOMAS: That is correct, Your Honor.

2 THE COURT: And some -- and parties, as I understand
3 it, at the auction, can come in and bid on a B or bid on a B or
4 an A or both?

5 MR. THOMAS: Or both, if they are qualified bidders.
6 And of course, the debtor, in consultation with the committee,
7 from the bid deadline of the 12th, through the commencement of
8 the auction, will be communicating and working with all the
9 bidders, so we have an understanding of what they might have to
10 do to qualify. And, Your Honor --

11 THE COURT: And with the licensee?

12 MR. THOMAS: With the licensee. Your Honor, it is
13 important to note, though, that the debtors and their advisors
14 have informed all the potential bidders that are interested in
15 a going-concern A-type bid, that they should engage in
16 discussions with the proposed exit financier, Salus, to make
17 sure that the financing can be made available to a bidder
18 that -- other than the stalking-horse bidder.

19 And those discussions will be ensuing, we hope. We
20 encourage everyone to have those discussions, as well as any
21 discussions -- and there have been -- discussions with Mr.
22 Williams. So since -- over the last few weeks, since the no-
23 shop provision was terminated on November 5th, the debtors, Mr.
24 Williams, our advisors, have been meeting with various parties-
25 in-interest. We've been giving site visits. We've been

1 updating the data room on a daily basis and responding to
2 diligence requests.

3 So we're doing all of that. But we would prefer a
4 going-concern bid. We would prefer to keep 1,300 employees
5 employed. And therefore it's important that these bidders
6 engage with both Mr. Williams as a proposed licensee over the
7 terms of a license agreement, and with Salus as the proposed
8 exit financier --

9 THE COURT: Well --

10 MR. THOMAS: -- over the exit financing.

11 THE COURT: -- maybe we should use a term other than
12 exit -- it's not exit financing for this debtor, but it's exit
13 financing -- it's financing for the license transaction.

14 MR. THOMAS: It is. It's acquisition financing for
15 the license transaction.

16 THE COURT: All right. All right, does anyone wish to
17 be heard with regard to the timing? Yes, sir?

18 MR. KEENAN: Your Honor, this is Paul Keenan on behalf
19 of Salus Capital. I just wanted to clarify one issue with
20 regard to what we're calling -- I'll call it the acquisition
21 financing. Indeed, at least one bidder has contacted us as
22 early as this morning to talk to us about the possibility of
23 providing financing to them in a going-concern bid; and we're
24 meeting with them at 12:30 today.

25 But I just want to make clear that bidders shouldn't

1 consider Salus to be the sole source of possible asset
2 acquisition financing here. I just want to avoid a situation
3 where people expect that Salus will provide financing to
4 whatever bidder comes to the table. And obviously, that
5 couldn't be the case. Bidders should not only, if they want to
6 talk to us about possible financing, but should talk to all the
7 other lenders that are out there, so that they come to the
8 auction prepared with financing in place, if they indeed need
9 financing.

10 THE COURT: Thank you.

11 MR. HALPERIN: Good morning, Your Honor. Alan
12 Halperin on behalf of Doug Williams. Everything I heard is
13 perfectly accurate. I just want to elaborate a little more to
14 make sure the record is clear.

15 Mr. Williams is not only talking to Salus himself,
16 he's talking to other lenders too. But there's a limitation of
17 time; there's bringing people up to speed; there's the cost of
18 engaging other lenders. And he's making his decisions as he
19 goes along based upon time and his own personal resources.
20 Right now, I don't think anybody's going to be shocked by this,
21 obviously Salus is a logical target to talk to, given that they
22 are fully integrated and invested in this company, and they are
23 the farthest along.

24 To the extent -- and as has been made very clear --
25 people can talk to Mr. Williams if they want to try and pair

1 with him, or they can go anywhere else and not use him, either
2 on a going concern or a liquidation bid. That's their option.
3 They can talk to any lender they want to. If they have
4 interest in trying to do something with Mr. Williams, and this
5 is the lender that we are farthest along with, and it's likely
6 that we are going to be coming to the table with that lender,
7 obviously the lender has to be comfortable with whoever it is
8 we would be paired up with if we're there, because we can't
9 force them to lend to us if our -- effectively our partner --
10 although they're not partners -- are someone they're not
11 comfortable with.

12 But it's not as if anybody's trying to force someone
13 to one lender or another; trying to force someone to Mr.
14 Williams or not to Mr. Williams. It's just how things are
15 breaking. And I just wanted to make sure that was clear on the
16 record.

17 THE COURT: In your view, can a third party make a
18 type-A bid without Mr. Williams' involvement?

19 MR. HALPERIN: Of course. Absolutely.

20 THE COURT: All right. I'm not nearly as close to the
21 matter day in and day out as the parties are.

22 MR. HALPERIN: I mean, obviously I represent Mr.
23 Williams. I have my own views as to how successful they may be
24 without him. But that's neither here nor there. If they have
25 the money, and they're willing to step up, and they put the

1 highest number on the table, and they say they're going to go
2 forward, and the estate looks at it and says hey, that's great,
3 that's the highest number, like I said last hearing: god
4 bless.

5 THE COURT: All right. Now, let me say this. I think
6 in our telephone conversation I took the view that the debtor
7 would not be, at this point, authorized to reimburse Mr.
8 Williams for any of his expenses in connection with this. That
9 was eliminated from the approval, and I'm not in any way
10 suggesting that should be changed.

11 I was not fully informed as to the nature of the
12 transaction. I shouldn't say I wasn't fully informed. I
13 didn't understand the entire nature of the transaction in that
14 phone call. Very difficult to get up to speed on a case where
15 I hadn't taken first-day orders, although I'd read all of them
16 and I'd read a report of the transcript of the first-day
17 hearings.

18 So let me just say this -- and we now have a
19 committee, and the committee certainly will be heard. But at
20 some appropriate time in the case, I would not want to preclude
21 the parties from coming back and seeking reimbursement of
22 expenses incurred in good faith. And I didn't -- I had no
23 intention of excluding that.

24 It seemed to me, that in terms of preliminary
25 approval, without a committee and with the transaction in the

1 very preliminary stages that it was, that it simply didn't
2 appear appropriate for the debtor to pay expenses of its CEO.

3 MR. HALPERIN: I can understand that. I mean, in a
4 vacuum, look, given where --

5 THE COURT: And that's the way we're proceeding. I'll
6 just make that comment for the record.

7 MR. HALPERIN: It's appreciated.

8 THE COURT: And we'll -- if we have to deal with it in
9 the future, we may, we may not. And parties obviously reserve
10 their positions, whatever those positions may be.

11 MR. HALPERIN: Thank you, Your Honor.

12 THE COURT: And I'm not -- I'm not indicating any view
13 on the merits of the transaction.

14 MR. HALPERIN: Understood. And as a practical matter,
15 obviously, that's something that we were thinking about in one
16 form or another at some point, depending upon how the
17 transaction in the case breaks, having a further discussion on
18 this.

19 Mr. Williams is an individual. He's not a large
20 corporation. He doesn't have the funding that a lot of the
21 other parties around do. And this has been very rough on him
22 on a personal basis, in terms of the money he's had to expend.
23 And it's made it more difficult, because it has limited his
24 options as to where he could go, what he could do, because he
25 doesn't have the resources. You know, a hundred grand here, a

1 hundred grand there, some people it's not quite so significant.

2 To Mr. Williams, it's actually very material.

3 THE COURT: I can understand that.

4 MR. HALPERIN: Thank you, Your Honor.

5 MS. LAUKITIS: Lisa Laukitis from Jones Day on behalf
6 of the Carlyle Group and Bluestar Alliance. We do not think
7 that the timing works with respect to the auction.

8 THE COURT: Tell me what their position is in this
9 case?

10 MS. LAUKITIS: We are a potential bidder on the
11 assets. And we've been engaging -- attempting to engage with
12 the debtor and with Mr. Williams, to put together bids by the
13 requested deadline.

14 To have this information come in only three days prior
15 to the auction is insufficient when bidders are being asked to
16 provide binding bids with no financing out. We need detail on
17 what the Salus financing is going to look like, so we know
18 whether OpCo is a viable bidder. We need to understand whether
19 Salus is going to give the same deal to all IPCo bidders, and
20 if not, what is that decision going to be based on.

21 And it's easy to say we could go out to other lenders
22 to try to financing OpCo on our own. But without knowing
23 exactly what OpCo's obligations are under the stalking-horse
24 bid, are they contributing twenty million dollars, are they
25 contributing one dollar, you know, is that deal -- we've been

1 told it would be offered to other IPCo bidders, but it's not
2 clear what the obligations are and whether they would apply
3 equally to all bidders. So it's really putting bidders at a
4 disadvantage to get that information so late in the game.

5 But it also raises a concern we have about the overall
6 process. When we came to you at the first bidding procedures
7 hearing, we expressed concern that the process was vague,
8 bidders weren't really clear on what they needed to do to be in
9 the game here. The example at that hearing was not knowing how
10 the debtors were valuing an A bid or a going-concern bid,
11 versus a B or liquidation bid. And Your Honor rightly said,
12 you hoped the information would be forthcoming after the no-
13 shop was lifted and parties were able to sign CAs.

14 So we sat down, we waited, we signed a CA, we got the
15 information from the debtors, and we asked that question. And
16 we were told minimum A bid is just under seventy-three million
17 dollars, minimum B bid is just under seventy-seven million
18 dollars.

19 But then that raises the question, well, if you get
20 one for each, how do you value those against each other. And
21 the answer we got was the A bid is preferable to the debtors.
22 And we asked well, how much would a B bid have to bid an A bid
23 in order to be seen as the higher and better offer; and no
24 matter how many times we have asked the question, we're not
25 getting the answer.

1 So everybody's pushing us --

2 THE COURT: Do you think there is -- do you think
3 there is an answer to that question?

4 MS. LAUKITIS: Well, there has to be some value.
5 They're going to have to decide eventually. The debtor has
6 discretion and the Court has discretion, but someone is
7 eventually going to have to decide.

8 THE COURT: Somebody's going to have to take a
9 position, yes.

10 MS. LAUKITIS: And take a position. And it makes it
11 very hard for people to participate in this process without
12 having more clarity on that. So then we're trying to play
13 along. We say, okay, then we'll take a look at having an A
14 bid. And yet, all this information that would enable us to
15 compete on a fair basis with the stalking horse is not made
16 available to us.

17 So it really appears, at least to us, that the process
18 is being managed to ensure that the stalking-horse wins. And
19 we're missing critical information that we need to participate.

20 THE COURT: Anyone else?

21 MR. KEENAN: Your Honor, that was actually the
22 reason -- I'm sorry, for the record, this is Paul Kennan on
23 behalf of Salus Capital Partners. One of the comments that
24 Jones Day made was precisely the reason why I made the
25 observations that I did earlier. It should be clear that Salus

1 has spent hundreds of hours working on this current IPCo/OpCo
2 structure to develop comfort with the parties, comfort with the
3 credit risk, and comfort with everything else that a lender
4 typically considers when extending credit.

5 I can almost categorically state that Salus will not
6 simply offer the same credit on the same terms to any party
7 that shows up. And I daresay no lender would do that in any
8 scenario. Having said that, we actually plan a meeting with
9 the Carlyle Group this afternoon at 12:30. And we're very
10 happy to discuss with them possible financing options.

11 But again, bidders should come with cash -- their own
12 financing arrangements, if they're not able to reach one with
13 Salus beforehand. And I just want to make sure that everyone's
14 just clear on that issue.

15 MR. CHESLEY: Your Honor, Richard Chesley, just
16 briefly to comment on --

17 THE COURT: Who do you represent?

18 MR. CHESLEY: I represent the stalking-horse bidder,
19 ABG HMX. And I just rise very briefly to dispel the notion
20 that this is being run to the benefit solely of the stalking
21 horse. While Salus has spent hundreds of hours, our group has
22 spent probably thousands of hours to put structures in place.

23 We have all of our financing ready, willing, and able
24 to proceed with this transaction. We have worked with the
25 debtors and all constituencies to see if we can get a going-

1 concern transaction on the table to save these jobs and save
2 these businesses. Unfortunately, that's the position where we
3 are today.

4 Nothing is being done to manage this to diffuse any
5 open bidding. In fact, all of our conversations, all of our
6 discussions with every stakeholder here, is to make sure that
7 this is an open process, that we are ready, willing, and able
8 to participate in.

9 There's a limit, though, to resources and time. And
10 that's what we're trying to manage through today. So I just
11 wanted to comment on the point that this is being done solely
12 to benefit the stalking horse. Thank you.

13 MS. LAUKITIS: Your Honor, Lisa Laukitis, again, from
14 Jones Day. If it's not being run to benefit the stalking
15 horse, and parties are really able to partner with Mr. Williams
16 to create a competing OpCo bid, which the debtors and everyone
17 has said is what their preference is, then we need the
18 information necessary to compete in that bid. What are OpCo's
19 obligations? What's the financing that it would have? Is the
20 entity viable as financed? And whether or not that financing
21 is available to anyone else.

22 Once we have those, if we get those answers, you know,
23 we would then be in a position to participate. But as it
24 stands now, it's not a level playing field.

25 THE COURT: Now, when do you need that information, in

1 your view?

2 MS. LAUKITIS: The sooner the better. And the time
3 having been pushed out a week, certainly helps. But I would
4 say certainly the stalking horse and Mr. Williams know what
5 their agreement is amongst themselves now. They cut a deal to
6 have an OpCo/IPCo structure, and they each know what they're
7 contributing to that. That's something that could be shared
8 immediately.

9 THE COURT: That doesn't appear to me to be obvious
10 from the record that I have.

11 MS. LAUKITIS: It's not.

12 THE COURT: But -- that they know what the situation
13 is.

14 MS. LAUKITIS: Well, I --

15 THE COURT: The question is --

16 MS. LAUKITIS: -- we've been told they have --

17 THE COURT: -- how long will it be before that comes
18 together.

19 MR. HALPERIN: I guess this is the first time I'm not
20 rising to say all is wonderful. Mr. Williams is happy to talk
21 to the Carlyle Group and Bluestar, their company that is
22 participating, and in fact, has had conversation with them.

23 But I would suggest that as I also explained to the
24 Court at an earlier hearing, Mr. Williams himself is also going
25 to be looking at who wants to pair up with him, just as Salus

1 is. Because he's got to live with someone going forward on a
2 basis. And he's going to be negotiating with anybody that
3 talks to him. And just because he offers X to one party,
4 doesn't necessarily mean it has to be X to every party.

5 It's going to be a commercial negotiation, as it has
6 been all along. I think personally, the conversations that may
7 or may not have taken place between Mr. Williams and ABG as to
8 you'll put in X I'll put in Y to get to Z, isn't really
9 appropriate or fair to give to another interested bidder.
10 Because Mr. Williams, quite frankly, he said, I'll speak to
11 anybody; I'll consider anybody, for real. And he is. But he's
12 obviously -- and I said this too -- he's not here solely as a
13 charitable endeavor.

14 He'd like to see the companies continue. He'd like to
15 see the jobs saved. But he's the one that's got to live with
16 OpCo going forward. And he wants to try to cut a deal that he
17 thinks gives him the best opportunity, the best stability going
18 forward, to make this company work.

19 So -- I mean, I'm making up numbers. If the bid is
20 seventy-seven million dollars on a going concern and ABG is
21 putting in sixty and he's putting in seventeen, that doesn't
22 mean that it's going to be the same spread with another bidder
23 or that it necessarily should. He's going to be making his own
24 risk evaluation, risk determination for negotiations. And I
25 think if we had come to Your Honor and said Mr. Williams is the

1 only game in town, you can only do this with Mr. Williams, you
2 have no alternative, that would be grossly unfair. But it's
3 not.

4 Anybody is free to come in with any operator. Anybody
5 is free to make a bid for this or not. I think very highly of
6 Mr. Williams and his abilities, but I'm not so foolish as to
7 say he's the only operator of a well-known brand in the
8 country, much less well-known suits.

9 THE COURT: Well, let me see if I understand. Mr.
10 Williams is attempting to put together an A transaction. A
11 transaction --

12 MR. HALPERIN: Small "a" yes.

13 THE COURT: A versus B.

14 MR. HALPERIN: Not option A.

15 THE COURT: Option A. And in order to do that, he
16 needs financing.

17 MR. HALPERIN: Correct.

18 THE COURT: And he's been working on this for some
19 time.

20 MR. HALPERIN: Correct.

21 THE COURT: And he's working, at the moment, with
22 Salus?

23 MR. HALPERIN: Among others, but yes. He's furthest
24 along.

25 THE COURT: And maybe among others, but Salus has been

1 in this company for a long, long time, or at least for several
2 months, and has done quite a bit of due diligence.

3 MR. HALPERIN: Correct.

4 THE COURT: And I was just told that that's important
5 in the scheme of things, which I understand and respect. I
6 guess the -- and the only question I think before me is when
7 that deal on financing is going to come together.

8 MR. HALPERIN: If it were up to me it would -- I'm
9 sorry.

10 THE COURT: And if it was up to you, it would have
11 come together a week ago.

12 MR. HALPERIN: Absolutely.

13 THE COURT: And I obviously can't tell the parties it
14 should be done on any particular date. I'd want to give the
15 parties as much time as possible. But it does seem to me that
16 we're now delaying everything very substantially.

17 MR. HALPERIN: I would --

18 THE COURT: And I don't want to tell Mr. Williams that
19 you have less time than you think you need in order to get your
20 financing in place, so that the market knows what the situation
21 is. But it does seem to me, three days, may be a little bit
22 short -- unnecessarily short.

23 MR. HALPERIN: I would -- I beg to differ on the
24 following basis. I will tell you first that Mr. Williams
25 himself and all the other parties that are involved, I don't

1 think that anybody is trying to delay this to play games.

2 THE COURT: No, no. Nobody's trying to delay.

3 MR. HALPERIN: Okay, no --

4 THE COURT: I don't believe that would be the case.

5 MR. HALPERIN: I certainly didn't get that impression
6 from Your Honor, but I wanted to put it on the record. That's
7 the first thing.

8 The second thing is if we can get closure on terms of
9 a financing going forward, you can be sure that we're going to
10 announce to the world, hurray, we have financing, as quickly as
11 we can. Beyond that, to the extent somebody comes to Salus and
12 says -- Mr. Keenan can talk about this himself -- but if
13 someone comes to Salus and says I want to do something with Mr.
14 Williams and I'd like to talk to you about the package you put
15 together with him because I want to make sure you're
16 comfortable with me being his licensor as well, I mean, Salus
17 is going to have a conversation with them and make their own
18 credit risk. Mr. Williams is having conversations with people
19 and will make his own determination.

20 In terms of the timing, I think it's a little bit
21 disingenuous -- not wholly, but a little disingenuous for some
22 folks to say we don't know what to do, because frankly,
23 although -- maybe this unfair for me to say -- but I think the
24 parties that are here talking, quite frankly, if they wanted
25 to, had the ability to write a check for this entire thing, and

1 they could underwrite Mr. Williams and say we'll make you a
2 loan, and it wouldn't be an issue. But nobody wants to do
3 that; and I understand that.

4 Maybe that's not in their own commercial interest, but
5 it's not as if someone's sitting here, oh, woe is me, I don't
6 have the ability to do this. It's a tough situation. If --
7 and I'll be frank. We would have been thrilled if we could
8 have gotten bridge financing from any one of the parties that
9 was willing to be here so that we weren't under this time
10 pressure. But it hasn't been offered up. So we're dealing
11 with the situation we've got.

12 In terms of the details, I don't know that it's really
13 right that every detail of his financing should be vomited out
14 onto the record.

15 THE COURT: I bet you could find a better word than
16 that.

17 MR. HALPERIN: Beautifully displayed on an elegant
18 platter --

19 THE COURT: Displayed.

20 MR. HALPERIN: -- with garnish all around.

21 THE COURT: Displayed is better.

22 MR. HALPERIN: What's relevant to the bidders, as far
23 as I can tell, is the fact that you know what the bids are, you
24 know what you're being asked to do. If you'd like to work with
25 Mr. Williams, he's talking to people; he has an open mind and

1 he's talking to people. And --

2 THE COURT: So let me just clarify the situation. The
3 proposal -- debtors' proposal that the committee has agreed to
4 is that financing would be required three days before the
5 auction?

6 MR. HALPERIN: Correct.

7 THE COURT: Is that right? But that doesn't put it
8 before the bids. Does it make sense to say all right, three
9 days before the bids?

10 MR. HALPERIN: Your Honor, at the end of the day, I
11 would say no, because if we can get it done by then, we're
12 going to. But if we can't get it done by then -- and that's
13 the thing that's really concerning me. We're trying and we're
14 pushing. If we can't, then at least --

15 THE COURT: I think you ought to try. And if you
16 can't, you ought to explain why you can't.

17 MR. HALPERIN: I just don't --

18 THE COURT: Is that impossible to live with? This is
19 longer, by the way, than you originally proposed, because we're
20 putting everything out a week.

21 MR. HALPERIN: We are, Your Honor. And if Your Honor
22 will remember, you asked the question, and I conspicuously
23 avoided giving you a direct answer to the question at the last
24 hearing, and I was grateful you didn't push me when you said
25 I'm sure that the Mr. Williams entity would be grateful to have

1 another week, because quite frankly, I didn't want to roil the
2 negotiations that were going on.

3 THE COURT: Well, I'm not saying that you're
4 precluded. I'm just saying, you ought to have a reason why it
5 can't be done.

6 MR. HALPERIN: I guess I'm just having a hard time
7 understanding why whether Mr. Williams has reached financing or
8 not that far in advance is going to matter. I would sug - -
9 what I would suggest is we ought to flip it a little bit. What
10 we ought to do is say that if somebody else wants to come in
11 and put in an, I think it's option B bid, with Mr. Williams or
12 with anybody else, they ought to be able to have until the same
13 three days before to say that they have the same financing and
14 that it's option A or option B, as opposed to taking Mr.
15 Williams and rushing up his time frame, when he's doing
16 everything he can to try and push this over the goal line. I
17 mean, it's --

18 THE COURT: I don't want to deter him in the
19 slightest.

20 MR. HALPERIN: So I would rather flip it the other way
21 and say if someone else comes in with a B bid, which is the
22 going-concern bid, that they have the --

23 THE COURT: No, that's the A bid, I'm sorry. I think.

24 MR. HALPERIN: I'm sorry. I had it backwards --

25 THE COURT: That's the A bid.

1 MR. HALPERIN: -- the A bid, that they have the same
2 ability --

3 THE COURT: They have the ability.

4 MR. HALPERIN: -- to say we have until that time.

5 THE COURT: They don't have to make their bid until
6 the 12th.

7 MR. HALPERIN: But if we're giving our --

8 THE COURT: But --

9 MR. HALPERIN: -- three days before the auction would
10 be the 14th. If they can get their bid in by the 12th --

11 THE COURT: -- if you can get -- the 12th is a --

12 UNIDENTIFIED SPEAKER: Wednesday.

13 THE COURT: -- Wednesday. If you can get your
14 financing together by the 7th, you ought to put it on the
15 table. If you can't, you ought to just give a reason why.

16 Yes, let me hear from Salus.

17 MR. KEENAN: Your Honor, I was just conferring with
18 our client. And what we just mentioned was that it looks like
19 the 9th is definitely feasible. I can go back and talk about
20 the 7th, but --

21 THE COURT: That's Sunday.

22 MR. KEENAN: That's Sunday. That is a Sunday. So
23 maybe we'll need the weekend. But I think what we could do is
24 we could -- we can agree to make absolute best efforts to have
25 something in place by the 9th.

1 THE COURT: Your client doesn't want to work on the
2 weekend. Neither -- you may, but your client doesn't want to
3 work --

4 MR. KEENAN: I often do.

5 THE COURT: Why don't we -- all right. Let me hear
6 from the debtor.

7 MR. KEENAN: Sure.

8 MR. THOMAS: Thank you, Your Honor. Mark Thomas on
9 behalf of the debtors. Until we came here today to agree to an
10 extension with the committee, I believe the debtors thought and
11 the stalking-horse bidder thought, and Mr. Williams thought,
12 that we were going to have an auction on the 10th, Monday, and
13 that the financing would be required on Thursday, December 6th.

14 From the debtors' standpoint, the sooner the better.
15 And if the financing can be finalized by December 6th, that is
16 a very important step. It is one of the conditions to a going-
17 concern bid, and we would love for that to happen so we could
18 post that and people would know it.

19 If, for whatever reason, it can't be finalized and
20 closed by the 6th, maybe we could report. But this is a
21 company -- Salus has only been in from August, but it's been a
22 long time since August. It seems like we've been in it for a
23 very, very long time. So from the debtors' standpoint -- and
24 we don't represent Mr. Williams, we're not negotiating that
25 financing; we don't represent Salus, we're not negotiating the

1 financing; we don't represent Authentic Brands, the stalking-
2 horse purchase, we're not negotiating the license agreement --
3 from the estates' standpoint, sooner is better.

4 And sometimes when there's an earlier deadline, people
5 focus and they work a little harder and they get things done.
6 So we're in favor of that.

7 With respect to -- if I may, with respect to
8 Carlyle -- counsel for Carlyle and Bluestar? Last night at 10
9 o'clock we had a conversation with them that went for over an
10 hour. I was on the phone along with the debtors' investment
11 banker, Mr. Richards of Blair. Unfortunately, it was the first
12 time I had talked to them since over a week prior to the
13 petition date.

14 Bluestar has been involved in the pre-petition
15 marketing. They wanted to be the stalking-horse purchaser. I
16 think my last discussions with them were October 12th or
17 October 15th, pre-filing. I haven't talked to them since --
18 until last night.

19 With respect to them and any other bidder, we, the
20 debtors, have been consistent: What do you want? What do you
21 need? When do you want it? Who have you asked? And we will
22 do everything in our power to produce what we have and what we
23 control. And the things that we don't have and we don't
24 control, things from the stalking-horse purchaser or things
25 from Salus, we are doing everything in our power to press them

1 to finish up that work.

2 We will continue to do everything in our power to
3 bring Carlyle and Bluestar across the finish line. Carlyle is
4 a very big, sophisticated institution. They know how to do
5 this. Thirty-two years ago, when I started clerking for a
6 bankruptcy judge, I was taught two thing about buying companies
7 out of bankruptcy. It's the M&M rule. You need money and you
8 need management. If you don't have money and you don't have
9 management, you can't buy the company.

10 So hopefully all the bidders out there know the M&M
11 rule. And if they're listening in now, pay attention and let's
12 get moving.

13 THE COURT: All right, thank you.

14 MR. KUGLER: Your Honor. Rob Kugler on behalf of the
15 committee. I've been conspicuously quiet, because I'm kind of
16 caught between rock and a hard place, which seems to be my lot
17 in this case.

18 I agree with Your Honor -- not to be obsequious -- but
19 that an aspirational deadline that is not necessarily tethered
20 to whether Mr. Williams is a qualified bidder or not, is a good
21 thing. And I think that the timing that you were talking
22 about, Friday the 7th, makes great sense -- or if you want to
23 go with Thursday the 6th, that makes great sense as well.

24 What we don't want to do, though, is lose Mr. Williams
25 as a qualified bidder; and the financing is a precondition to

1 him being a qualified bidder. And I think that's why you're
2 seeing some consternation to my right.

3 And so I think what Your Honor has suggested is the
4 perfect solution. Get the financing in place by that date, and
5 if you can't tell us why not. I mean, presumably, there should
6 be a good reason. There's no enormous hurdles to getting that
7 in place by them. So that's the committee's position.

8 MR. HALPERIN: As long as the parties are going to --
9 I have to speak to my client about this. But as long as the
10 parties are going to say that if we don't have it in by that
11 date, it doesn't mean he's not a qualified bidder, I mean, what
12 am I going to say? We're trying to do it earlier than that --

13 THE COURT: That's --

14 MR. HALPERIN: -- but let's be frank. I'm going to
15 come in and say because we haven't reached agreement on all the
16 terms. I mean, I can tell you that now, that's what I'm going
17 to say if I come in on the 7th and we're not done.

18 THE COURT: You don't have to come in. You just have
19 to -- you have to explain why. I gather the 9th works. The
20 9th is --

21 MR. HALPERIN: To whom am I explaining? That would be
22 helpful.

23 THE COURT: The world.

24 MR. HALPERIN: Tell me what the website is I'm going
25 to be posting on.

1 THE COURT: The world; the world. And what the
2 penalty is, I don't know. But having a deadline does focus
3 attention. Matters can get done. If we were at -- if this was
4 Christmas Eve, it would get done. So I am certain the parties
5 will do the best they can. I'm sure nobody wants to work --
6 they'll be working over the weekend on other things. And this
7 will give other bidders enough information to perhaps make a
8 bid for the A transaction, which seems to be what everybody
9 wants.

10 MR. HALPERIN: Which is --

11 THE COURT: And Salus has been -- I don't mean to put
12 any pressure on Salus whatsoever -- but they've been quite
13 cooperative since the first day of this case.

14 MR. HALPERIN: True.

15 THE COURT: And I'm not suggesting that they should or
16 they shouldn't be. I'm sure you can -- if it doesn't work, you
17 can tell me why.

18 MR. HALPERIN: That's okay.

19 THE COURT: So we'll move on to the next issue.

20 MR. HALPERIN: Just so we're clear, though, I hear
21 what you're saying; I understand the deadline. We're going to
22 do our darndest to get it done before that.

23 THE COURT: You have --

24 MR. HALPERIN: And if not we'll explain. I don't have
25 the intention of then afterwards telling people, by the way,

1 here's my deal with ABG about how much I'm putting into this
2 deal. Because that's forcing me to do the same deal with
3 someone else that I may not be as comfortable with or
4 otherwise.

5 I have my financing; it's in place. Let's negotiate a
6 deal that you can live with. And you know that I have my
7 financing. If you want to finance me otherwise or if you want
8 to talk to Salus, god bless. And as we're all saying, talk to
9 Salus now. That would be helpful.

10 THE COURT: Yes. But this is a free and open auction.

11 MR. HALPERIN: Absolutely.

12 THE COURT: And hopefully it will go forward smoothly.
13 But that's what I -- I may have to sort it out.

14 MR. HALPERIN: Understood.

15 THE COURT: All right, thank you.

16 MR. HALPERIN: Thank you.

17 MS. LAUKITIS: Your Honor, just a point of
18 clarification. I believe the licensing agreement was
19 required -- was one of the documents that was required to be
20 provided three days before the auction previously. Now Mr.
21 Halperin is suggesting he's not going to provide it and will
22 only provide details on the financing.

23 THE COURT: No, I don't think he was suggesting that.

24 MR. CHESLEY: No, Your Honor. The license agreement
25 was posted, at the Court's request, I think two weeks ago.

1 There are two minor clarification edits that will be -- that
2 are being signed off on today. So that agreement has been done
3 for quite some time.

4 THE COURT: All right. The fourth issue?

5 MR. THOMAS: Your Honor the --

6 THE COURT: I hope it's a simpler issue.

7 MR. THOMAS: It's going to be much simpler, Your
8 Honor. It is the Salus claim discount issue, which is a letter
9 agreement that was entered pre-petition between the debtors and
10 Salus, and filed as docket number 114. It's going to be easy
11 because the committee wasn't sure how that might impact
12 bidding. And we've worked out how it would impact bidding, and
13 we put it in the bid procedures order.

14 And it basically provides that to be a qualified
15 minimum bid, the A bid has to have a cash -- sort of opening
16 purchase price of 72,795,000 dollars. And that's based on
17 building up the amount that's owed to Salus, plus the ABG offer
18 to the estate, plus the break-up fee, plus the expense
19 reimbursement, plus the minimum overbid. And that comes up to
20 72,795,000 dollars. And that is the floor cash purchase price
21 for a qualified bidder to qualify for the auction.

22 And for the B bid, it's the same build-up, but it
23 becomes 76,975,000 dollars, because the stalking-horse purchase
24 agreement provides for a 9.1 million dollar payment to the
25 estate under the B bid, as opposed to a 5.1 million dollar

1 payment to the estate under the A bid. So the bidders will
2 know where they have to bid at. And we've resolved it and
3 clarified it to the -- and the committee agrees.

4 THE COURT: All right. Does anyone wish to be heard?

5 MR. KUGLER: Your Honor, just by way of disclosure to
6 the Court. There is a dispute between the debtor and Salus on
7 the one side and Authentic Brands on the other side, as to what
8 happens in certain circumstances to the three million dollar
9 discount. We've agreed to put that off until a later date,
10 because we're all very hopeful and even maybe a little bit
11 optimistic that the result of the auction will obviate the need
12 to litigate that issue. But I don't want that to get lost in
13 the shuffle here, that that is out there and we've agreed to
14 set it aside.

15 THE COURT: All right.

16 MR. THOMAS: Yes. Yes, that is.

17 THE COURT: Well, then --

18 MR. THOMAS: We're reserving all rights. There's a --
19 we think there's a very low, low likelihood that there might be
20 a dispute between the stalking-horse purchaser and the estate.
21 But based on the interest of other parties, we think that's not
22 going to happen.

23 THE COURT: All right. Then you'll provide me with an
24 appropriate order closing these four issues with regard to the
25 sale, setting the dates; and I will check immediately after

1 this hearing to be sure that I can give you the time.

2 MR. THOMAS: Thank you.

3 THE COURT: I'm quite sure I can on the afternoon of
4 the 19th. We can certainly proceed on the 20th or the 21st if
5 we need to, but let's not be pessimistic.

6 MR. THOMAS: We're hoping for the best, but preparing
7 for the worst, Your Honor. I will then pass this on to Mr. --
8 my colleague, Mr. Pete Young, who will take care of the rest of
9 the agenda.

10 THE COURT: The rest of the agenda. All right.

11 MR. CHESLEY: Your Honor, before moving on, may I be
12 excused. Our presence is not necessary for the rest of the
13 agenda.

14 THE COURT: Very good.

15 MR. CHESLEY: Thank you.

16 MR. YOUNG: Thank you, Your Honor. Peter Young,
17 Proskauer Rose for the debtors. Your Honor, the remaining
18 items on the agenda, many of which are first-day items, though
19 we're quite a ways from the first day, as Your Honor knows, we
20 have set forth on the agenda, at docket number 181 --

21 THE COURT: All right. Why don't we go through them
22 quickly?

23 MR. YOUNG: Absolutely. And we've resolved, Your
24 Honor, all of the issues of the committee and the --

25 THE COURT: All right. Tell me --

1 MR. YOUNG: -- U.S. Trustee.

2 THE COURT: -- are. I've read the objections.

3 MR. YOUNG: The resolutions, Your Honor, on the -- and
4 let me say generally. The resolutions generally were about
5 committee consultation. But in the final order on wages, for
6 example, Your Honor, number 3 --

7 THE COURT: Well, let's go through it. Final order on
8 wages.

9 MR. YOUNG: Sure.

10 THE COURT: The committee had some objections. What
11 are the resolutions?

12 MR. YOUNG: The resolutions, Your Honor, are that we
13 added a sentence saying "absent further court order, no pre-
14 petition amount may be paid to any third-party non-employee
15 entity, where such entity has an obligation to continue
16 providing services to the debtors, notwithstanding the pre-
17 petition amount outstanding; and such entity has no right,
18 either by order of the court or otherwise, to be paid before
19 other similarly situated creditors."

20 That is the substantive revision that we made to that
21 order on account of the committee's objection.

22 THE COURT: Does anyone wish to be heard?

23 All right. Item 4, procedures for 503(b)(9) claims.

24 MR. YOUNG: Your Honor, the primary objection of the
25 committee was that they wanted to be provided notice, and they

1 wanted the right to, along with the debtors, object to
2 503(b)(9) claims. We gave them those rights and integrated
3 into this order the notice to the committee of objections, and
4 the right to consultation on settlement of 503(b)(9) claims.

5 THE COURT: All right. It does seem to me that some
6 of these orders should probably be -- or some of these issues
7 should certainly be postponed until after the sale. Things
8 will look different at that time. I don't know that the debtor
9 should be paying 503(b)(9) claims at this point.

10 MR. YOUNG: We are not paying them, Your Honor. This
11 is a --

12 THE COURT: You're not paying them. And --

13 MR. YOUNG: -- process by which to channel the claims,
14 because the company's been getting a lot of inquiries from
15 potential claimants about how to do it and when to submit them.
16 And this is a just a procedural order.

17 THE COURT: All right. I also recall, I believe, that
18 the debtors' counsel has assured me that the sale does not
19 contemplate the business remaining being administratively
20 insolvent.

21 MR. YOUNG: That's right, Your Honor.

22 THE COURT: The sale as proposed to the stalking-horse
23 bidder does not leave the debtors in Chapter 11 without the
24 ability to pay its administrative and priority claims.

25 MR. YOUNG: That's right, Your Honor. The formula in

1 both the A and B bids contemplate an amount that the debtors
2 have estimated would cover all of those claims.

3 THE COURT: All right. Okay, item 5?

4 MR. YOUNG: Item 5, Your Honor, is the taxes motion.
5 The one substantive change that we made in response to the
6 committee's objection was to give the committee consultation
7 rights with respect to any proposed payment of taxes and
8 regulatory fees, and only in the event that the committee
9 objects, to seek further order of the court to pay such taxes
10 and fees.

11 THE COURT: All right. Does anyone wish to be heard?
12 Okay. Item 6?

13 MR. YOUNG: Your Honor, item 6, the committee asked
14 for a couple of revisions: one to cap the amount of the
15 prospective payments to shippers and customs, in accordance
16 with what we requested in the motion, which we've now added to
17 the order, and again, give the committee consultation rights
18 with respect to expenditures under this order, with the caveat
19 that we will seek court authority in the event that the
20 committee would object to any of those payments.

21 THE COURT: Very well. Does anyone wish to be heard?
22 All right. Item 7?

23 MR. YOUNG: Again, Your Honor, this is the insurance
24 motion. With respect to the committee's objection, we have
25 added that we will not spend greater than the cap that was set

1 forth in the motion, subject to further order of the court, and
2 again, giving the committee consultation rights, in this case,
3 with respect to not only new policies into which the debtors
4 may propose to enter, but also with respect to any life
5 insurance policies that the debtors make payments on account
6 of. The committee asked that they have consultation rights,
7 specifically, with respect to those life insurance policies.

8 THE COURT: Does anyone wish to be heard?

9 All right.

10 MR. YOUNG: Your Honor, on ordinary course
11 professionals, we made substantive changes to the proposed
12 order based on the comments of Mr. Khodorovsky and the United
13 States Trustee, to make sure that this applied only to counsel
14 that the company engages, and not other professionals who are
15 engaged in the ordinary course. We also substantially revised
16 the declaration of disinterestedness form to comply with the
17 United States Trustee's wishes. Those changes then obviated
18 the need to make additional changes as requested by the
19 committee.

20 THE COURT: All right. Does anyone wish to be heard?

21 All right. I'm not sure you need the order at all,
22 but since you spent so much time and effort on it.

23 MR. YOUNG: Thank you, Your Honor.

24 THE COURT: If the sale goes through, certainly if the
25 A sale goes through, I don't know whether you'll need it at

1 all. But --

2 MR. YOUNG: That very well may be true.

3 THE COURT: -- having it doesn't mean you have to hire
4 anybody.

5 MR. YOUNG: Exactly right, Your Honor. We appreciate
6 that.

7 THE COURT: All right.

8 MR. YOUNG: Your Honor, with respect to the balance of
9 the motions, at number 9 through 14 -- I'm sorry, through 16 --
10 there were no objections from the committee. There were
11 comments given by the United States Trustee. And in each case
12 we have integrated those comments. We made sure to pick up any
13 comments that the United States Trustee provided to us that
14 were integrated into interim orders, so that as we pursue final
15 orders, those comments have been baked in to the extent that
16 they could be.

17 THE COURT: All right. Well, these are important
18 motions. I'm simply going to go through them.

19 MR. YOUNG: Sure.

20 THE COURT: First is a motion of the debtors for entry
21 of a final order authorizing bank -- use of existing bank
22 accounts, business forms, and more important, the existing cash
23 management system.

24 Item 10 is a motion for an order authorizing the
25 debtors to maintain and administer customer programs and honor

1 related pre-petition obligations to customers. It's on a final
2 basis.

3 11: procedures for interim compensation and
4 reimbursement of expenses. 12: rejection of unexpired leases
5 of nonresidential real property. 13: employment and retention
6 of Proskauer Rose as counsel for the debtors. 14: retention
7 of William Blair & Company as investment banker, with
8 appropriate revisions requested by the U.S. Trustee, I assume?

9 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky for
10 the U.S. Trustee. In light of the supplemental declaration of
11 Mr. Richards and the revisions to the proposed order made by
12 the debtors and William Blair, the U.S.T. has no objection.

13 I have been informed, Your Honor, right before the
14 hearing, that there'd been additional revisions to the order
15 made at the request of the creditors' committee. And I
16 think -- and these are extensive revisions to the compensation
17 structure. I think it may be useful, maybe for committee
18 counsel to go through them. These did not originate with the
19 U.S. Trustee's Office. Thank you, Your Honor.

20 THE COURT: All right, I think --

21 MR. YOUNG: Your Honor, Mr. Khodorovsky --

22 THE COURT: -- they should be.

23 MR. YOUNG: -- is correct. In response to an informal
24 objection by the committee to the order approving the Blair
25 retention, we made a number of revisions including to the

1 compensation structure payable to Blair.

2 THE COURT: I looked at the compensation structure
3 myself last night. Tell me what those revisions are.

4 MR. YOUNG: Those revisions specifically, Your Honor,
5 are to delete the forbearance fee and credit facility
6 transaction fee from the Blair engagement letter; a credit of a
7 hundred percent of the post-petition monthly fees against the
8 M&A or financing fee; and a reduction, Your Honor, in the
9 incremental aggregate consideration level payments on the
10 transaction fee, to the extent that 15.d of the engagement
11 letter is revised -- and I can read it into the record for Your
12 Honor's benefit; but it will be in the proposed order that
13 we'll submit.

14 Up to and including fifty million dollars of aggregate
15 consideration, the Blair fee is 1.85 percent. More than fifty
16 million up to but not including sixty-five million, the
17 increased fee is 2.4 percent. Sixty-five million up to and not
18 including eighty, is 3.25 percent. Eighty and up to but not
19 including one hundred is 4 percent. And one hundred million
20 and up is 5 percent. Those are the rates to which the
21 committee and Blair have agreed, and the debtors support.

22 THE COURT: Does anyone wish to be heard?

23 MR. KHODOROVSKY: Your Honor, the U.S.T. has no
24 objection to this revised compensation structure and including
25 the other revisions made, the U.S.T. has no objection. Thank

1 you, Your Honor.

2 THE COURT: Well, these are important amendments, and
3 I appreciate the parties' willingness to resolve the issues.

4 MR. YOUNG: Sure.

5 THE COURT: All right. Item 15?

6 MR. YOUNG: Item 15, Your Honor, is a retention under
7 327(a) of Epiq Bankruptcy Solutions. Epiq was retained as the
8 debtors' claims and notice agent under 156(c). But this, Your
9 Honor, gives them the authority to engage in not only preparing
10 schedules and statements, but also to engage in balloting and
11 tabulating and other procedural stuff that's not covered under
12 156(c).

13 THE COURT: Does anyone wish to be heard?

14 All right, we'll enter an appropriate order. And
15 number 16, finally?

16 MR. YOUNG: There were no comments from the committee,
17 Your Honor, on the engagement of CDG. There were comments by
18 the United States Trustee, all of which we took and integrated
19 into the proposed order.

20 THE COURT: Very good. Does anyone wish to be heard?

21 All right. Then we'll enter an appropriate order.

22 And there is no success fee --

23 MR. YOUNG: Correct.

24 THE COURT: -- or transaction fee for the CDG Group?

25 MR. YOUNG: Correct, Your Honor. To clean up the

1 record and the Court's docket, we have withdrawn two motions,
2 one of which is the motion for entry of an order establishing
3 notice, case management, administrative procedures. Given the
4 pace at which this case has moved, we didn't think that we were
5 going to be able to stay within the confines of what we had set
6 forth in the proposed order, so we've withdrawn it.

7 And at the direction of Your Honor, we have withdrawn
8 the motion to pay critical vendors, to the extent not
9 heretofore granted, in very limited capacity, which Your Honor
10 gave us at one of the telephonic hearings during the -- I guess
11 it was right post storm, I think it was.

12 THE COURT: Does anyone wish to be heard on any of the
13 issues?

14 Very good. Well, I appreciate very much your being
15 able to get us here today. Tell me when is our -- our next
16 hearing, is that the sale hearing on the 19th?

17 MR. YOUNG: That's correct, Your Honor.

18 THE COURT: We'll use that as the --

19 MR. YOUNG: Yes, if you're available that date --

20 THE COURT: -- date for the initial case conference
21 then.

22 MR. YOUNG: Yes. We'll also probably file a few
23 additional procedural things to be heard on that date well, and
24 notice them up.

25 THE COURT: All right. Anything else?

1 Thank you very much.

2 IN UNISON: Thank you, Your Honor.

3 (Whereupon these proceedings were concluded at 11:12 AM)

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I N D E X

RULINGS

	Page	Line
Debtors' bidding procedures motion will be approved upon receipt.	44	23
Debtors' final wage motion, granted.	46	23
Debtors 503(b)(9) procedures motion is granted.	48	3
Debtors' tax motion is granted.	48	12
Debtors' final shipper and warehouser motion is granted.	48	22
Debtors' insurance motion is granted.	49	9
Debtors' ordinary course professionals motion is granted.	49	21
Debtors' cash management order is granted.	50	20
Debtors' customer program motion is granted.	50	24
Debtors' interim compensation motion is granted.	51	3
Debtors' motion to reject certain leases is granted.	51	4
Debtors' motion to retain Proskauer Rose is granted.	51	5

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RULINGS

	Page	Line
Debtors' motion to retain William Blair &	53	5
Co., granted		
Debtors' motion to retain Epiq under 327(a)	53	14
granted		
Debtors' motion to retain CDG Group is	53	21
granted.		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: December 4, 2012